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No. 84-1559

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

UNITED VAN LINES, INC.,
Petitioner

vs.

JAMES K.T. HUNTER and
GINA F. BRANDT,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

AMICI CURIAE BRIEF

Consolidated Freightways Corp. of DE and Transcon Lines, Inc.

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TABLE OF CONTENTS

Page

I

REASONS WHY THE PETITION FOR CERTIORARI MUST BE GRANTED 1

II

THE FEDERAL PREEMPTIVE TENT 2

III

THE NEED FOR NATIONAL UNIFORMITY 7

IV

CONCLUSION 11

TABLE OF AUTHORITIES

Cases	Page
Adams Express Co. v. Croninger, 226 U.S. 491 (1913)	5, 9
Atchison, Topeka & S.F. Ry. v. Harold, 241 U.S. 371, 26 S.Ct. 665 (1916)	4, 5
Charleston & W.C.R.Co. v. Varnville Furniture, 237 U.S. 597, 35 S.Ct. 715 (1915)	9
Chicago, B & Q R. Co. v. Miller, 226 U.S. 513, 33 S.Ct. 155 (1913)	9
Emery & Co. v. American Refrigerator Co., 246 U.S. 634, 38 S.Ct. 414 (1918)	5, 6
Missouri & Pacific Ry. v. Elmore & Stahl, 377 U.S. 134, 84 S.Ct. 1142 (1964)	8
National Garment Co. v. New York, C & St.L.R.Co., 173 F.2d 32 (8th Cir. 1949)	5
Schaeffer, Inc. v. Minneapolis, Northfield & So. Ry. Co., 254 Minn. 248, 94 N.W.2d 551 (1938)	5, 6
St. Louis, I.M. & S.R. Co. v. Starbird, 243 U.S. 592, 37 S.Ct. 462 (1917)	9
Sylgab Steel & Wire Corp. v. Strickland Transportation Co., 270 F.Supp. 264 (E.D.N.Y. 1967)	2
Thurston Motor Lines v. Jordan K. Rand, ____ U.S. ____, 103 S.Ct. 1343 (1983)	1
White Cross Hospital v. Chesapeake & Ohio R.R. Co., 125 N.E. 2d 363 (Ct.App.Ohio 1953)	5

Statutes	
United States Code, Title 28, Sec. 1337(a)	1
United States Code, Title 28, Sec. 1445(b)	4, 5
United States Code, Title 49, Sec. 11707	4

Other Authorities	
Removal of Causes to Federal Courts, Report to Accompany H.R. 9994 by Mr. Dyer from the Committee on the Judiciary, H. R. Rep. No. 120, 63rd Cong., 2nd Sess. 1913	5, 6
4 Williston on Contracts, 3194 (Rev.Ed. 1936)	4

I

REASONS WHY THE PETITION FOR CERTIORARI MUST BE GRANTED

This case involves, as material here, a claim exceeding $10,000.00 arising from an interstate common carrier's asserted misfeasance which resulted in damage to cargo.[1] The cause was removed from the state court to federal court. The entire case was later ordered remanded by the Ninth Circuit Court of Appeals.

Since early in this century, this court has uniformly held that cargo damage cases are removable because they are cases "arising under" an Act of Congress regulating commerce.[2] This court has never wavered from the position that when the Interstate Commerce Act speaks to an issue, the federal courts must accept jurisdiction.[3] See, *Thurston Motor Lines v. Jordan K. Rand,* ____ U.S. ____, 103 S.Ct. 1343 (1983). For the second time in as many terms, a panel of the Ninth Circuit has improperly refused to assert jurisdiction. The Ninth Circuit was summarily reversed in *Thurston.*[4] It should be summarily reversed in this case.

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[1]The second cause of action sounds in "bad faith breach of the covenant of good faith and fair dealing" which inheres in the bill of lading contract and seeks in excess of $5,000,000. In substance, this cause of action complains that United Van Lines processed the plaintiff's claim for cargo damage in a tortious manner.

[2]Former Section 20(11) of the Interstate Commerce Act more commonly known as the Carmack Amendment. Reenacted as 49 USC §11707.

[3]In cargo damage cases recent legislation requires that $10,000 be in controversy before the matter may be heard by a federal court. 28 USC §1337(a). Federal law of course, applies whether the cause is tried in federal or state court.

[4]"... Needless to say, only this Court may overrule one of its precedents. Until that occurs, [our prior precedent] is the law, and the decision below cannot be reconciled with it. The petition for certiorari is granted, the judgment of the Court of Appeals is reversed, and the cause is remanded to that court for the proceedings consistent with this opinion." 103 S.Ct. at 1345.

II

THE FEDERAL PREEMPTIVE TENT

We start with the indisputable proposition that there is a federal question presented when a person sues a common carrier for damage to freight moving in interstate commerce. A subsidiary (and more refined) question arises in this case and can be stated as follows: Are the claims processing rules of the Interstate Commerce Commission (and the claims processing conduct of an interstate carrier) so inextricably interwoven within the general subject matter of Carmack Amendment liability ('actual injury') so that their asserted violation by a carrier may *not* be parsed out for separate treatment under the general aegis of state "tort" law. Stated in simpler terms, the issue here is whether or not a carrier's claim processing behavior — which indisputably occurs later in time than the actual carriage of goods — is a transportation service whose regulation "arises under" the Interstate Commerce Act.

A fairly recent case authored by Judge Weinstein of the Eastern District of New York analyzed the very problem which confronts us here. In the case of *Sylgab Steel & Wire Corp v. Strickland Transportation Co.*, 270 F.Supp. 264 (E.D.N.Y. 1967), the following facts pertained. The plaintiff delivered a number of machines to the defendant carrier in New York City for transportation to New Orleans, Louisiana. A uniform bill of lading was issued. At the destination, damaged machinery was delivered. After an inspection was made of the damaged machinery, the defendant carrier specifically authorized and directed the plaintiff to repair the machinery and bill the defendant for its expenses. Although the facts stated in the case are not clear, it would appear that the defendant reneged on part of its promise to pay all of the necessary repairs.

In due course, the plaintiff filed its lawsuit in state court. The defendant carrier removed the matter to federal court. The plaintiff thereafter made a motion to remand. The plaintiff's central theme was that the carrier's claims handling, (namely the promises for payment made by the carrier and later reneged upon, which were made subsequent to the actual physical delivery of the goods), is a matter which is governed by state common law and not by the Carmack Amendment. In refusing to remand the case to state court, Judge Weinstein made the following observations about the litigation of "arising under" controversies:

> "At one end of the spectrum of litigation in this country is a relatively small number of instances — including the case before us — where federal law has preempted the field and federal question jurisdiction is clear. At the other end are cases where the federal content is so miniscule as to require us to ignore that ingredient for jurisdictional purposes if we are to maintain the approximate present 'distribution of power between national and state governments' and in the 'daily workings' of federal and state courts. [citations].
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> In between lie the less clear areas — not involved in the present case — where sophisticated federal question tests are sometimes applied."
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> "Subtle language and techniques for probing the heart of complex federal issue questions are confusing when applied to legal abrasions such as the one before us. . ." 270 F.Supp. at 268.

Judge Weinstein then goes on to address himself squarely to the issue of whether post-delivery behavior of the carrier

evinced during the claim processing period "arises under" the Interstate Commerce Act.

> "At this late date there can be little doubt that paragraph 11 of section 20 of title 49 of the United States Code — the Carmack Amendment — [presently 49 USC §11707] preempts the field and supersedes all state common law rights. It provides that 'any common carrier . . . shall be liable . . . for the full actual . . . damage to . . . property' being shipped in interstate commerce. This provision and chapter 4 of title 49 dealing with bills of lading issued by common carriers was designed to avoid the 'confused situation' arising from differences in substantive rights under the laws of the various states. 4 Williston on Contracts, 3194 (Rev.Ed. 1936) Despite some earlier intimations to the contrary [citations], it is now clear that 'the federal government entered and preempted the field of liability for interstate shipments, even though in a particular case the plaintiff, but for the Carmack Amendment, could have recovered at common law.' [citations] 'The liability of a carrier for damage to an interstate shipment is a matter of federal law controlled by federal statutes and decisions.' [citation] The 'prime' object of the Carmack Amendment was 'to bring about a uniform rule of responsibility as to interstate commerce and interstate commerce bills of lading' so that state law 'on that subject has been excluded.'" Citing *Atchison, Topeka & S. F. Ry. v. Harold,* 241 U.S. 371, 378, 36 S.Ct. 665, 668 (1916).
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> "Congressional understanding of the comprehensive nature of federal substantive regulation of the rights of shippers and carriers with respect to damaged goods is clear beyond peradventure. In a Congressional report recommending adoption of the forerunner of

Subdivision (b) of Section 1445 of Title 28, [adopting the former $3,000.00 threshold requirement for removal], the matter was thoroughly discussed. See *Removal of Causes to Federal Courts,* Report to Accompany H. R. 9994, by Mr. Dyer from the Committee on the Judiciary, H. R. Rep. No. 120, 63rd Cong., 2nd Sess., 1913. The report flatly states:

> 'In *Adams Express Co. v. Croninger,* (226 U.S. 491) it was held that Section 20 of the Interstate Commerce Act as amended by the Act of June 29, 1906, abrogates all state and common law liabilities on interstate shipments of property. If in any case *this statute* does not give the plaintiff the right of recovery, *he has none* [emphasis added]. That being true, all cases against railroad companies for loss or damage on interstate shipments of necessity must arise under a "law regulating commerce" '.

What is true of railroads in this respect is true of truck lines."

• • •

"State and federal courts have properly been reluctant to divide the relationship between interstate shippers and carriers into discreet parts, some governed by federal and some by state law. See, *Emery & Co. v. American Refrigeration Co.,* 246 U.S. 634, 38 S.Ct. 414 (1918); *Atchison & Topeka Ry. v. Harold,* 241 U.S. 371, 376, 36 S.Ct. 665 (1916) (second agreement for intrastate shipment not 'new and distinct'); *National Garment Co. v. New York, C. & St. L. R. Co.,* 173 F.2d 32 (8th Cir. 1949) (collateral insurance contract does not supersede obligation under bill of lading); *White Cross Hospital v. Chesapeake & Ohio RR Co.,* 125 N.E.2d 363, 366 (Ct.App.Ohio 1953) (rules with respect to filing of claims subject to federal law); *Schaeffer,*

Inc. v. Minneapolis, Northfield & So. Ry. Co., 254 Minn. 248, 94 N.W.2d 551, 558 (1938) (original bill of lading 'governs the entire transportation'). The courts tend to view events in interstate commerce as part of a total transaction which extends beyond the actual movement across state lines. As in *Emery*, so in the instant case. 'In no aspect can it be maintained that any [cause of action] attempts to allege the primary liability of the defendant . . . otherwise than *as* [*a*] *carrier*. *Emery & Co., supra*, 246 U.S. at 637, emphasis added.

Where the contract between carrier and shipper or receiver [of the goods] to provide compensation for damaged goods is so closely connected to the agreement embodied in the bill of lading as to constitute at most a clarification or modification of that agreement, it is governed by federal law. The *federal preemptive tent* over the main attraction, the bill of lading, covers what is essentially a side show, the agreement by the carrier to repair [Emphasis added]."

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"If the federal policy in favor of unhindered commerce is strong enough to cover the damage claims based upon the bill of lading, it is powerful enough to cover collateral agreements on compensation for damaged goods such as the one in this case." 270 F.Supp. at 268-270.

Judge Weinstein knew what he was talking about. When Congress engrafted the Carmack Amendment onto the Interstate Commerce Act, it did not use a scalpel but rather a meat ax: "If in any case this statute does not give the plaintiff the right of recovery, *he has none*. That being true, all cases against railroad companies for loss or damage or interstate shipments of necessity *must arise under a law regulating commerce*." H.R.Rep. — No. 120, *supra*. When

Congress had worked its will, there was no more state breach of contract action, there was no more state action for negligence, there wasn't even a state action for common carrier's failure to deliver. All that remained was the naked right to pursue a remedy arising under the Carmack Amendment.

Everyone's conduct in the claims processing arena is only relevant and only has substance to the extent that a remedy may be pursued under the Carmack Amendment. If a plaintiff has no right under the Carmack Amendment, he has no right to insist that a carrier handle its claims in any particular way. One "right" completely depends upon the other and is an inextricable part of it. That being so, it cannot either logically or lawfully be claimed that cases which concern themselves with the misfeasance of a carrier in its claims handling procedures do not "arise under" an act of Congress regulating commerce.

Federal law not only preempts the field here, it completely settles the right and the remedy to boot.

III

THE NEED FOR NATIONAL UNIFORMITY

The Ninth Circuit opinion states plainly — and wrongly — that it is competent for a state to have a remedy for a cargo damage matter that is not in conformity with federal law. It states that "... the core of the tortious bad faith claim, however, is that the alleged [claims processing] of the appellees constituted a breach of this *state-law* duty to handle the contract claim in good faith. * * * ... The acts [complained of] would, we think, constitute torts even in the absence of a Carmack Amendment dispute." 746 F.2d at 645. It is a bromide, oft repeated, that Congress preempts fields of law and preempts the creation of rights and remedies where there is a pressing need for national uni-